



U.S. Department of Justice

Environment and Natural Resources Division

BSG:AML  
DJ No. 90-11-3-1620/2

Environmental Enforcement Section  
P.O. Box 7611 Telephone: (202) 514-4213  
Washington, D.C. 20044-7611 Facsimile: (202) 616-6584

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VIA EMAIL, TELECOPY AND REGULAR MAIL

EPA Region 5 Records Ctr.



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Jonathon Conte, Esq.  
Blank Rome Comisky & McCauley LLP  
PNC Center  
201 E. Fifth St., Suite 1700  
Cincinnati, OH 45202  
FAX: 513 362-8787

Gary Franke, Esq.  
120 E. Fourth St.  
Suite 560  
Cincinnati, OH 45202  
FAX: 513 564-9990

Re: United States v. Aeronca, Inc. et al.  
Civil Action No. 1:01 CV 00439  
Continuation of Dick and Marty Clarke Depositions; Settlement

Dear Gary and Jon:

As you are aware, the RPMs' depositions have been rescheduled for Sept. 4, 2002. At this time, however, I have decided not to continue the depositions of Marty and Dick Clarke during the week of August 26. My reasons are as follows:

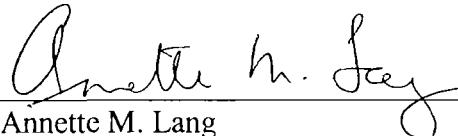
(1) It is not clear to me that I have all of the documents that currently exist with respect to the issues in this lawsuit. While I feel fairly comfortable that I have all with respect to Marty Clarke, I feel much less comfortable with respect to Dick Clarke. Gary, you and I have scheduled a phone call for Friday afternoon to go over some of the document issues, and we will proceed with that call. As I indicated in a letter to you, Gary, I will be asking that you -- at a minimum -- submit revisions to Dick Clarke's 2001 104(e) response because of major problems with it. I do not want to schedule Dick Clarke's continuation deposition until I am certain that all existing documents have been turned over to me, and until I receive the revised and certified 104(e) response. If it takes you, Gary, too long to submit the revised and certified 104(e) response, I will have to take the steps necessary to secure the revisions, and may have to proceed with Dick Clarke's continued deposition without the revised and certified 104(e) response.

(2) I do not want to schedule Marty Clarke's continuation deposition until I schedule Dick's. I am fairly confident that -- barring some newly discovered witness -- these two continued depositions are my last fact depositions. Thus, I want to take only one trip to Cincinnati for these. In the interim, because you, Jon, and your client have demonstrably indicated that you are ready for serious settlement discussions, I propose that we move forward with these discussions next week. I will be ready by then, and I believe that Mike will be ready as well.

Gary, with respect to settlement, the honest truth is that you and/or your client have not made any gestures, statements, or signals regarding settlement that would lead me to conclude that Dick Clarke is prepared to make a significant move off of his only settlement offer to date. Unless you indicate to me that Dick Clarke is ready to make such a move, I do not see the point of settlement talks. In my opinion, your client's previous offer does not appropriately reflect the risks of joint and several liability that he faces. Additionally, I do not believe that his previous offer reflects that liability evidence that the United States and the contribution plaintiffs have developed this summer. These are just my opinions, however. I do want to state clearly to you -- just as I have advised Jon -- that while the United States currently is prepared to come down from its last demand, the United States will be far less inclined to do so once we have retained our construction and demolition debris expert. We expect to retain our expert by mid- to late September. I make these last two statements so that you can determine what type of advice you wish to give to your client. I also want to reiterate that nothing you or your client has said or done to date has led me to conclude that your client is prepared to significantly increase his offer. Indeed, all actions to date lead me to conclude that your client would like his day in court. That certainly is his prerogative. I wish to advise you, however, that -- barring an adverse decision against the United States in the distant future -- the time between now and mid-September is probably when your client would see the lowest demand from the United States. Such a demand, however, would only come after your client made clear his intention to significantly increase his last offer.

Thank you for your attention to these matters.

Sincerely,



Annette M. Lang  
Trial Attorney

cc: Craig Melodia (via email)  
Mike O'Callaghan